

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 306 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

H.D.DAVIERWALA & OTHERS

Versus

D.L. MEENA & OTHERS

Appearance:

MR NJ ANJARIA for Petitioners

MR JD AJMERA for Respondents No. 1, 2, 4, 5

MR ND GOHIL for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/10/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioners have made the prayers in this Special Civil Application which reads as under:

- (a) Your Lordships will be pleased to issue a writ of or in the nature of mandamus directing the respondents Nos.1 and 2 to issue necessary permit and/or licence in favour of the petitioner

no.2 for manufacturing salt in the land in question;

(b) pending the hearing and final disposal of this Special Civil Application, Your Lordships will be pleased to direct the respondents to renew the licence as per the letter dated 19th September, 1985, without insisting upon the payment of rent and without insisting upon execution of lease in favour of the petitioners by the respondents;

(c) pending the hearing and final disposal of this Special Civil Application, the respondents Nos.1, 2, 4 and 5, their agents and servants be restrained from acting upon the order of Resumption dated 6-1-1986.

(d) petitioners be awarded the costs of this application;

(e) and any other orders that are necessary in the interest of justice be passed.

This court has issued the notice on 20th January, 1986 and interim relief in terms of Para no.9(c) has also been granted. On 19th March, 1986, rule has been issued and interim stay was refused. The Court had clarified that the assignment charges which the petitioners pay to the Department would be refunded to them within three months from the date of the final order with 10% interest if the petition is ultimately allowed. If any lease-deed is required to be executed, it would be without prejudice to the rights of the petitioners. It is not in dispute that pending this Special Civil Application the lease has been renewed in favour of the petitioners and is still in force.

One of the contention raised by the learned counsel for the petitioners is that the order of resumption, annexure 'H' dated 6-1-1986 contains no reasons or grounds. I have gone through the contents of the order dated 6-1-1986 and no reasons have been given on the material question, how the claim of the petitioners of the ownership of the land in dispute is not acceptable. The petitioner no.1 has been granted 208 acres of the land for manufacture of salt in exchange of 52 acres of agricultural land. This grant has been made by the Government of Bombay, Revenue Department, which subsequently in the year 1960, the State of Gujarat has confirmed. The petitioner no.1 has sold this land to petitioner no.2. The petitioners have raised serious

question of the ownership or title in the land which has been created on the basis of the grant made in favour of petitioner no.1. The Central Government, on the other hand, claims it to be its own land.

Now the question which has to be decided with reference to all the documents produced by the petitioners is that who is owner of this land. The grant of licence for manufacturing of salt on this land is an independent and separate matter which has no relevance whatsoever to the title/ownership of the land. In the order impugned nothing has been said regarding the claim of the petitioners of the ownership and title over the land. The counsel for the respondent, Union of India, Shri J.D. Ajmera though raised a point that the dispute which has been raised by the petitioners in this Special Civil Application is to be decided by the Civil Court and not by this Court under Article 226 of the Constitution of India. Though there may be some substance in this contention of the learned counsel for the respondent, Union of India, but this petition has been admitted and is pending for all these years. The petitioner has made the claim of its ownership over the land and the relevant document has also been produced. In view of this fact, the respondent, Union of India, should have decided the said matter and the order should have been made giving out the reasons how the claim aforesaid of the petitioners is not acceptable. Only on reasoned decision they could have been in a position to know what grounds prevail with the Union of India to hold against the petitioners. However, licence has been renewed in favour of the petitioners which continues till date.

The interest of justice will be met in case this Special Civil Application is disposed of in terms that the matter should be decided afresh by the concerned Ministry of Union of India after considering all the documents filed by the petitioner no.1 claiming thereunder the ownership/title over the land in dispute. This matter shall be decided by the concerned Ministry within a period of four months from the date of receipt of certified copy of this order. In case the claim of the petitioner regarding the ownership and the title over the land in dispute is not acceptable then a reasoned order may be passed and a certified copy of the same may be sent to the petitioner no.1 or to the petitioners by registered post. In case the petitioners or any of the petitioners desire personal hearing, the same may also be given before making the order. However, in case, the decision of the respondent's concerned Ministry goes against the petitioners or any of the petitioner then

only course available to them or to either of them is to file the civil suit and not to approach this court by way of writ petition because the question of title can be better gone into in the civil suit, as to reach the decision thereof, the necessary oral and documentary evidence are required. Rule stands disposed of accordingly.

However, it is made clear that the order made by this Court on 19-3-1986 will be given effect to only in case the matter is decided by the concerned Ministry of Union of India, in favour of the petitioners and not otherwise. No order as to costs.

zgs/-